

item veto, enhanced rescission, expedited rescission—call it what you will. So I do not think that is the debate that I was trying to enter into, nor do I believe that is the intent of the amendment offered, that we are now on, by the Senator from Michigan.

What we are talking about is whether or not it is wise to use the enrollment procedure that has come out of the blue. I agree with my friend from Indiana. This is new. It has not been talked about before. It has been suggested by Senator HOLLINGS, it has been suggested by Senator BIDEN, as I understand it, and possibly others. But it was just one suggestion that was made somewhere down the line.

I happen to believe that the House of Representatives, which studied this matter, did not feel that the bill was unworkable unless we used the enrollment process that suddenly has been instigated here as a key part. I do not believe that the Budget Committee or the other committee of jurisdiction that considered this matter felt that the measures that were advanced were inoperative or had not been thought through because we did not come through this magical enrollment procedure.

I will simply say that most of the remarks that the Senator from Indiana made were with regard to the merits and why we need a line-item veto of some type. He did not, I think, adequately address the concerns that I was trying to bring up with regard to this enrollment process that I think could cause us some serious constitutional problems, those of us who are now for and have been for a line-item veto of some type for a long, long time.

So I simply want to focus, if it was not understood, on the concerns of this Senator with regard to this cumbersome procedure to carry out the line-item veto.

For the life of me, I have not been able to understand yet how the President pro tempore and the Speaker and the President can carry out their duties by signing something that is on a computer. There is nothing wrong with using a computer to make sure that everybody knows what every item is from 1 cent to trillions of dollars. But I do not believe that that particular enrollment process is the key to success at all. In fact, I think that kind of a process, as I say once again, could cause us some considerable difficulties in the courts. No one knows how they would decide that.

I simply wanted to make it clear, Madam President, that I was not in conflict with what the Senator from Indiana said with regard to the necessity for a line-item veto. I am trying to focus on the fact that I believe that the enrollment process is also causing some concern to Senators on that side of the aisle, as evidenced by the fact that the Senator from Michigan must have some concerns about it or he would not be in here offering his amendment.

So I simply warn and would like to have some consideration given to why can we not pass a cleaner, simpler, more direct line-item veto, a la what was sent to us by the House, a la what was incorporated in S. 4, what was incorporated in S. 14? I do not believe that all of the people that touched those different propositions had not thought through the process to the point that all is forsaken unless somehow we accept this concept that has been brought into this body for the first time, as I know it, under the present consideration of a line-item veto or something akin to it in this current session of the Congress.

I happen to think that it is ill-advised to go that far, but the majority has a right to work its will.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Chair in her capacity as a Senator from Texas suggests the absence of a quorum. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWN). Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. I thank the Chair. (The remarks of Mrs. HUTCHISON pertaining to the introduction of S. 592 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. HUTCHISON. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE LINE-ITEM VETO ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 401, AS MODIFIED, TO
AMENDMENT NO. 347

Mr. McCAIN. Now may I ask what the parliamentary situation is?

The PRESIDING OFFICER. The pending amendment at the present time is the amendment of the Senator from Michigan [Mr. ABRAHAM].

Mr. McCAIN. Mr. President, if there is no further debate on the amendment, I move the amendment.

Mr. BYRD. Mr. President, there is no such motion under the Senate rules.

There is no such motion in the Senate rules, moving adoption of an amendment.

The PRESIDING OFFICER. Does someone seek recognition?

Mr. McCAIN. I move adoption of the amendment.

Mr. BYRD. Mr. President, there is no such motion under Senate rules.

The PRESIDING OFFICER. Does someone seek recognition?

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, the majority leader has made it quite clear, as has the Democratic leader, that we want to finish this bill tomorrow. We have now 14 amendments pending on the bill. We have spent a long time on the bill. We would like to have debate on this amendment. Any Member of this body can put the Senate into a quorum call if they wish.

I would like to go ahead and debate the Abraham amendment and be able to move on to other amendments, if that is possible. If it is not possible, then obviously we may have to inconvenience Members by staying here very late tonight so that we can keep consonance with the desires of the majority leader and the rest of the Members of the body to finish this legislation tomorrow and not spend 3 and 4 weeks on a single piece of legislation as we did with the balanced budget amendment and other amendments since we have gone into session here.

So, Mr. President, I hope that we can move forward with this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I am not ready at this moment to debate the amendment, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Mr. President, I again advise my colleagues that we have 14 amendments pending. We would like to get those done. An amendment is before the Senate. I would like to move forward with it.

The PRESIDING OFFICER. Does someone seek recognition for debate on the Abraham amendment?

If not, all those in favor of the amendment—

Mr. BYRD addressed the chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I do not seek to delay action on the amendment, nor do I seek to delay action on the bill. But this is an amendment that has just been called up and the author of the amendment is not in the Chamber. I was hoping to ask the author of the amendment some questions. If Senators want me to begin, I can talk at length, but I do not seek to do that. That is not my purpose. I wanted to ask some questions about the amendment, but I am also not ready yet to allow a vote on it, until I have an opportunity to ask a few questions.

Now, the Senator from Arizona, of course, is seeking to convey the impression that I am trying to delay the bill. I am not doing that. I am not quite ready yet to discuss this amendment, but I am also not ready yet to allow a vote on it, until I have an opportunity to ask a few questions.

So I will suggest if Senators wish to get on with the amendment, get the author of the amendment over to the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I say to my colleague from West Virginia, the Senator from Michigan, who is the author of the amendment, is on the floor now if the Senator chooses to proceed.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I have noted the amendment by Mr. ABRAHAM to the substitute offered by Mr. DOLE.

I ask unanimous consent that I may be able to ask questions of other Senators, notwithstanding that I have the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. My first question to the distinguished Senator would be, why does the Senator feel that it is necessary to offer this amendment to the Dole substitute?

Mr. ABRAHAM. I have watched the debate as it has proceeded here. And certainly during the period of time after the compromise version of this legislation was developed, I have heard various Members of the Senate express concerns about its constitutionality and it struck me that the area in which the concerns were primarily focused was, as earlier expressed, I think, by Senator LEAHY, the presentment issues that I have tried to address here.

My feelings were, although I believe as drafted the legislation could sustain

a constitutional test, that it was in our interests to make the changes I am proposing in this amendment to try to further address any concerns people might have.

Mr. BYRD. Mr. President, on yesterday I spoke at some length with respect to what I consider to be some constitutional flaws in the Dole substitute. One area which I discussed at some length was that which pertained to the presentation clause; the fact that under the legislation that is before the Senate, each of the bills or joint resolutions that will have been enrolled by the enrolling clerk of the House of origination will not have had action by either House, specifically, on that particular enrolled bill. Consequently, I felt that the legislation was constitutionally vulnerable. The pending legislation deems that each such bill has passed both Houses, when in reality, each such bill would not have passed either House, to say nothing of both Houses.

So I take it that it is that perception of the unconstitutionality of the legislation by Mr. DOLE that has led the distinguished Senator to offer the amendment which is presently before the Senate?

Mr. ABRAHAM. As I said, the concerns that had been expressed in the period of time during which this compromise was worked out and were expressed, I think by you yesterday and by others here today, were concerns I felt could be adequately addressed and resolved in this fashion. So I thought in developing this amendment we could effectively handle the concerns that had been raised, although, as I say, I do not necessarily accept the notion that the legislation would not pass constitutional muster as is. But I thought this would allay fears and concerns that had been brought up.

Mr. BYRD. But I think, Mr. President, that the amendment by the distinguished Senator will have certainly improved the legislation if the amendment is agreed to, and I have no doubt that it will be.

Let me ask the Senator a further question. His amendment reads as follows:

On p. 3, line 17, strike everything after the word "measure" through the word "generally" on p. 4, line 14 and insert the following in its place:

This is the language, now, that would be inserted by Mr. Abraham:

first passes both Houses of Congress in the same form, the Secretary of the Senate (in the case of a measure originating in the Senate) or the Clerk of the House of Representatives (in the case of a measure originating in the House of Representatives) shall disaggregate the bill into items and assign each item a new bill number. Henceforth each item shall be treated as a separate bill to be considered under the following subsections.

And so on.

The amendment of the Senator speaks not only with reference to appropriations bills but also with ref-

erence to authorization measures, does it not?

Mr. ABRAHAM. Yes, it does.

Mr. BYRD. And on page 5 of the substitute offered by Mr. DOLE and other Senators, under the section on definitions:

For purposes of this Act:

(2) The term "authorization measure" means any measure, other than an appropriations measure, that contains a provision providing direct spending or targeted tax benefits.

Now, would that include a reconciliation bill?

Mr. ABRAHAM. I am sorry?

Mr. BYRD. The definition of authorization measure, on page 5 of the Dole substitute, under section 5 titled "Definitions," paragraph (2):

The term "authorization measure" means any measure other than an appropriations measure that contains a provision providing direct spending or targeted tax benefits.

Does that language include a reconciliation bill?

Mr. ABRAHAM. I would defer that interpretation to the manager.

Mr. BYRD. What does the Senator think it means, the Senator who offered the amendment? Does he believe the term "authorization measure" includes a reconciliation bill?

Mr. President, I am left alone on the floor.

The PRESIDING OFFICER. The Senator from West Virginia has the floor. As I understand it, he is waiting for a response from the Senator from Michigan.

Mr. BYRD. That is the first question I have ever asked in the Senate that caused the whole Senate to vanish, other than the Presiding Officer and myself.

What am I to do?

The PRESIDING OFFICER. Senator, you have my complete attention.

Mr. BYRD. There was all this great hurry to get on with this bill and I have asked a question, but all Senators have left the floor.

Oh, they are returning now.

The PRESIDING OFFICER. The Senator from West Virginia has the floor and continues to have unanimous consent to proceed with questions to another Senator.

Mr. ABRAHAM. After consultation with the manager of the bill, it is our interpretation that, yes, it would include reconciliation.

Mr. BYRD. It would include a reconciliation bill.

Then, I will read the amendment of the Senator further. According to the amendment of the distinguished Senator, "the Clerk of the House of Representatives"—in most instances these measures would originate in the House.

The Clerk of the House of Representatives then would disaggregate the bill, meaning a reconciliation bill, would disaggregate the bill into items and assign each item a new bill number. In reconciliation bills there is almost always direct spending. There are targeted tax benefits. With the Senator's

amendment then, I take it that a reconciliation bill that has in it provisions providing direct spending or targeted tax benefits—such bills would have to be disaggregated. Am I correct?

Mr. ABRAHAM. Yes.

Mr. BYRD. Meaning the whole bill has to be disaggregated. So, if there are direct spending items in the bill, if there are targeted tax benefits, the entire reconciliation bill under the Senator's amendment has to be broken down, disaggregated for all of the items, assigned new bill numbers, and enrolled as separate bills. Am I correct?

Mr. ABRAHAM. Yes. It would have to be disaggregated.

Mr. BYRD. Is not the purpose of a reconciliation bill the bringing into proper balance spending and the raising of revenues in such a way as to moderate or to reduce the deficit? Am I correct?

Mr. ABRAHAM. That is correct. As I interpret the question, our amendment is designed in a mechanical sense to call for a yes-no vote on the question of all those separately disaggregated portions whether it is a reconciliation bill or other.

Mr. BYRD. Yes. So each of the items in the reconciliation bill would be enrolled separately and be sent to the President. If the President chooses to veto certain items in the reconciliation bill, would this not then have the undesired result of bringing into imbalance the reconciliation bill, rather than balancing the effects of revenue increases and direct spending costs?

Mr. ABRAHAM. I defer on this to the Senator from Arizona. I yield to him at this time.

Mr. MCCAIN. I thank the Senator from Michigan.

I would say to the distinguished Senator from West Virginia that this bill effects new spending, new taxes, or new entitlements. If the intention of reconciliation bills are to bring the deficit down, then we should find another vehicle because the deficit has not come down. The deficit has gone up. The deficit has gone up.

So I suggest that we invent a new vehicle. But a reconciliation bill, like any other bill that has new spending, new taxes, or new entitlements associated with it, would be subject to a line-item veto.

Mr. BYRD. But the term "authorization measure" under section 5, entitled "definitions," does not confine it to new spending or new targeted tax benefits. The term "authorization" means any measure other than an appropriations measure that contains a provision providing direct spending or targeted tax benefits. It does not say anything about new direct spending.

Mr. MCCAIN. If the Senator will turn to the next page, where it says the term "item" means with respect to an appropriations measure, any numbered section, any numbered paragraph, any allocation or suballocation of an appropriation made in compliance with sec-

tion (2)(a) containing a numbered section and an unnumbered paragraph, and with respect to an authorization measure, any numbered or unnumbered paragraph that contains new direct spending or a new direct tax benefit presented and identified in a conformance with (2)(b).

So I ask the distinguished Senator from West Virginia to look at next page for the explanation which seems to have eluded him.

Mr. BYRD. But the Senator's amendment said that the bill shall be disaggregated. That means broken down. A reconciliation bill shall be separated into all of its distinct parts and enrolled as separate bills and sent to the President.

Mr. MCCAIN. The Senator is correct.

Mr. BYRD. Whether there is "new direct spending" or just "direct spending."

Mr. MCCAIN. Only those items in the reconciliation bill which would contain new direct spending or new targeted tax benefits identified in conformance with section (2)(b).

In addition to that, I do not see in light of a reconciliation bill any new entitlement or expansion of existing entitlement would also be covered.

Mr. BYRD. What about a defense authorization bill? Would the entire bill have to be broken down?

Mr. MCCAIN. I would say no.

Mr. BYRD. Only if it contained new direct spending or a new targeted tax benefit or an expansion or new entitlement. Defense authorization bills do include direct spending for retirement.

What I am really trying to get at is that it seems to me that this amendment certainly has as its good purpose, the effort to cure what appears to be a constitutional vulnerability. But in the attempt, it raises as many questions as it answers.

Mr. MCCAIN. Could I respond to that? If I may ask the indulgence of the Senator from West Virginia to try to respond very briefly to that?

Mr. BYRD. Yes.

Mr. MCCAIN. I say to the Senator from West Virginia that we received from the Congressional Research Service from Mr. Johnny Killian, Senior Specialist in American Constitutional Law, who I know that the distinguished Senator from West Virginia is familiar with, and I will not read the entire opinion. I would like to read the last paragraph which I think pretty much sums up the situation in my view.

In conclusion, we have argued that the deeming procedure—

We know what the deeming procedure is.

may present a political question unsuited for judicial review, and, thus, that Congress would not be subject to judicial review.

I will not read the whole thing because there is some ambiguity here, I say to my colleague from West Virginia.

We have considered, on the other hand, that the courts may find they are not pre-

cluded from exercising authority to review this proposal. If the proposal is reviewed by the courts, and, even, if it is not, we have presented an argument leading to sustaining the deeming procedure as not in violation of a principle that bill, in order to become law, must be passed in identical version by the House of Representatives and the Senate. Because of the lack of available precedent, we cannot argue that any of the three versions of the argument is indisputably correct. Indeed, there are questions about all three.

I repeat—questions about all three. The arguments concerning the separate enrollment. He concludes by saying: "In the end, Congress must exercise a constitutional judgment when deciding on passage of a proposal."

The Senator from Michigan felt, as he stated, that there might be some ambiguities in judging this, and he felt that although it may or may not—the language of the legislation is probably constitutional as presently framed. By his amendment, he could remove some of the ambiguities associated with the constitutional question.

I do understand, and I paid attention yesterday to the very learned exposition of the Senator from West Virginia, about the constitutionality of this issue. I suggest that perhaps one of the conclusions we might reach in this debate would be the final sentence of Mr. Killian's opinion which says: "In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal," because as the Senator from West Virginia well knows, according to article I, what the Congress deems as a bill has always been taken by the courts as a bill.

Mr. BYRD. Well, Mr. President, I appreciate what the distinguished Senator has just stated. But I think we are missing something; what we are saying is going by one another. I do not think the Senator's response goes to the point I raised. I agree that the distinguished Senator, Mr. ABRAHAM, is seeking to cure the vulnerability of the language from a constitutional standpoint in the Dole substitute, especially as it referred to the presentation clause. He is seeking to get around the deeming feature of that language. That is not what I am questioning here. On that point, I am saying that I think his amendment is an improvement to the legislation.

But what I am trying to find out is whether or not this language contemplates a reconciliation bill. And in one instance under the section 5 definition, it reads: "The term 'authorization measure'—which includes a reconciliation bill—"means any measure other than an appropriations measure that contains a provision providing direct spending or targeted tax benefits." That would indeed include a reconciliation bill.

I think Senators ought to be aware of that when they vote on this substitute. It is not just talking about appropriations bills. It is talking about reconciliation bills as well. And Senators need to understand that the language

of the amendment by Mr. ABRAHAM instructs that the bill—the whole reconciliation bill—must be disaggregated if there is one item in it, one provision, that provides for direct spending or targeted tax benefits. The whole bill then must be broken down into several hundred, or perhaps thousands of separate “billetes.”

Mr. MCCAIN. I ask the Senator from West Virginia if he will yield.

Mr. BYRD. Yes.

Mr. MCCAIN. I apologize if I did not directly respond to his question. On March 22, there was a letter sent in to the Honorable TOM DASCHLE, JAMES EXON, and JOHN GLENN in response to a letter that was sent to the majority leader and it had a series of 11 questions. The last question, I say to my colleague from West Virginia, stated:

Finally, would the veto authority provided in the amendment extend to reconciliation measures? The current Byrd rule formulation appears to protect reconciliation titles that meet the Budget Committee's savings instruction, even if the titles contain the deficit increasing measures. Would this bill change that approach?

Does that get to the question that the Senator from West Virginia is asking?

Mr. BYRD. I am not sure that it does. Will the Senator be kind enough to read that again?

Mr. MCCAIN. It says,

Would the veto authority provided in the amendment extend to reconciliation measures? The current Byrd rule formulation appears to protect reconciliation titles that meet the Budget Committee's savings instruction, even if the titles contain the deficit increasing measures. Would this bill change that approach?

I believe that might be the question. Fundamentally, the amendment of the Senator from Michigan basically calls for just an added step in the procedure. But it would not change the fundamental question about a reconciliation bill. Is that an accurate description of what is in the mind of the Senator from West Virginia as to the impact of the amendment from the Senator from Michigan?

Mr. BYRD. I am not sure it is. My next question was, if the Senator sees any impact, what impact does this legislation have on the Byrd rule?

Mr. MCCAIN. “The pending line-item veto bill applies to reconciliation bills only if the reconciliation bill includes new direct spending for a new targeted tax benefit provisions,” as I have stated before. It goes on to say,

The line-item veto bill is independent of the Budget Act and does not change the application of section 313 of the Budget Act the Byrd rule to reconciliation bills. Compliance with the Byrd rule, section 313 of the Budget Act, or the budget resolutions reconciliation instructions, do not protect the reconciliation bill from separate enrollment. Just as appropriations bills are subject to the line-item veto procedures, even if they comply with the Budget Act, statutory caps, and the budget resolution's budget allocations, reconciliation bills are subject to the line-item veto procedures even if they comply with the

budget resolution's reconciliation directives and the Byrd rule.

In other words, what I think the Senator from West Virginia is getting at—and I am hesitant, obviously, to try to articulate what he does far better than I do—is that a reconciliation bill is an attempt by the Congress to balance certain competing priorities.

What the Senator from West Virginia is concerned about is, if you take out part of that, then it destroys the intent of the reconciliation process. I do believe that that would probably be one of the impacts if the line-item veto were misused by a President of the United States.

But I would find it very difficult to believe that Congress would not override a President who would abuse his authority in that fashion. But if that is the point the Senator is trying to make, I think that answers it.

Mr. BYRD. I thank the distinguished Senator. I believe that we are focusing on one and the same object now. I would not, however, have that much faith in any President, that he might not veto items that would result in an imbalance of the reconciliation measure.

Another question that I have: I note that the distinguished Senator's amendment provides for 1 hour of debate—not to exceed 1 hour—and that, of course, can be further limited. Suppose that it is discovered after the enrolling clerk has disaggregated the entire bill—remember, it must be disaggregated, and each item is to be assigned a new bill number. Suppose it is found that the enrolling clerk has made some errors, and that is certainly not entirely out of the question. We all make errors.

I note that there could be no motion to recommit, it is not in order to reconsider the vote, and there must be an up or down vote then on the matter; is that correct?

Mr. MCCAIN. That is correct.

Mr. BYRD. What do we do in instances where the enrolling clerk has made errors in the enrolling of the billetes? Will we have any way to make the corrections or are we left with no choice?

Mr. MCCAIN. If I might respond to the Senator, as the Senator from West Virginia well knows, at the beginning of every session, there is an authorization passed for the enrolling clerk to make “technical corrections.” Those technical corrections many times, as the Senator from West Virginia well knows, are pretty interesting. Sometimes we have amendments that are written on the back of an envelope and the instructions to the enrolling clerk are, “At the proper place shall be inserted.” It is very standard at the end of the passage of a bill that staff and others will make technical corrections to bring the bill into proper legislative language.

I believe that if the enrolling clerk had made a mistake and it came to

light that he or she did that, then that would fall under the technical corrections aspect of the rules of the Senate that are adopted each session.

Mr. BYRD. Mr. President, it seems to me that the Senate ought to have the opportunity to make corrections or to order corrections if such are found in the many hundreds of bills that result from the enrolling clerk's action, yet, the Senate would be deprived of the ability to do so. Which all goes to the point that this is a measure that has been brought to the Senate in a hurry.

The legislation was introduced in the Senate on Monday of this week by the distinguished majority leader. As far as I know, there was no input into it by the minority—none—and immediately a cloture motion was offered.

There was no committee report. There had been no committee hearings. If there were committee hearings, I know of none. They certainly have not been printed and placed on the desks.

But here is a wide-ranging, far-reaching piece of legislation that is being rammed through the Senate without enough time to carefully explore and probe and scrutinize and study and debate and question the various provisions that are in the bill.

I think it is fortunate that the distinguished Senator from Michigan, who has offered this amendment, has had an opportunity to at least get the amendment in before we finally vote on the bill. It certainly, as I have already indicated, is an improvement over the legislation that was ordered.

Now, there may be other improvements needed. But we are going to be expected to vote on this legislation by no later than Friday.

I do not know what will happen to this measure in conference. It will certainly undergo or can undergo many changes in conference. The House may hold out for the version of the bill that passed that body. What we get back from conference may be a blending of the two measures, or it may be one or the other, or it may not have a great resemblance to either.

I think it is unfortunate that the situation has developed whereby we cannot take more time and study and amend. This is an instance in which there is an effort to clarify and treat one of the rather glaring flaws in the legislation. I compliment the Senator on his offering of the amendment. I think that much has to be said for taking some time to examine the measure and debate it. But I still think that the legislation has many problems.

I hope that Senators will take a look at the RECORD and questions that have been raised today about this amendment. And there may be other questions that will occur to other Senators. I doubt that I have explored this matter to its fullest extent. But I hope it will cause other Senators to at least have a better understanding of what we are about to pass here.

This is going to be a first-class mess, where we break down the bill into hundreds of little bills and have them enrolled by the clerk of the originating body. They do not go through the usual procedures of having each bill or joint resolution read three times. We do not, indeed, debate each of the bills or have an opportunity to amend each of the little billettes.

And when they are vetoed by the President, as many as may be vetoed by the President, is it the opinion of those who are managing the bill that the several billettes that are vetoed by the President, will they come back to the Congress all at once within a 10-day period, or will some come the first day, some the second day, some the third day? And if there are three or four appropriations bills that happen to hit the Senate and the House for passage and are sent to the President about the same time, will the originating body be expected to vote on each of these little vetoed measures, or will the originating body have an opportunity to collect them, put them into one package to be overridden or not?

Mr. MCCAIN. Mr. President, I would say to the Senator from West Virginia that, first of all, as to how those bills might come over, as the Senator knows, the President has a certain number of days in order to consider a veto, so it would be strictly up to the President as to how he would want to do that. He might want to send some over early and some over later on. Of course, as the Senator knows, since each, as he calls them, "billettes" are viewed as a separate bill, they would be considered separately by the originating body.

I would like to make one additional comment about the problem if the enrolling clerk made a mistake. I would remind the Senator, as he well knows, it happens from time to time around here that the enrolling clerk makes an error. By concurrent resolution we correct those technical errors in both Houses, and I envision we could do that.

I think, again—and I hesitate to put words into the mouth of the most knowledgeable person in the Senate on these issues—I think the argument of the Senator from West Virginia is that if they came over in certain ways, separate or staggered, then perhaps the body that has to consider them would be deprived of the ability of considering them as a whole, as they did on the initial passage of the bill.

I think that, again, is a valid concern. But I would also hope that in coordination with the President of the United States, he would inform those bodies as to which bills he was going to veto and in what context. I think the communications are good between here and 1600 Pennsylvania Avenue.

Again, as the Senator from West Virginia did yesterday, those are valid concerns that I think need to be addressed, and I also believe that this kind of exposition of these aspects of

the bill is very important for the record as far as the illumination of our colleagues.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Arizona. I like to believe, too, that this kind of debate is informative and illuminating and helpful. I think it does generate additional thinking, which in turn may generate some additional amendments if such could be offered. I suppose the list has now been completed.

But in any event, it seems to me it is going to be a massive undertaking for the enrolling clerks. They have not been accustomed to anything like this, I do not believe. The idea of breaking down, for example, the bill that I mentioned yesterday, energy-water bill, breaking that down into 2,000 pieces, and each of the other 12 appropriations bills—which include the legislative branch, I assume, so the President could have an opportunity to line item out some parts of the legislative appropriation bill that either or both bodies might jealously want to guard. This is quite a load to put on the enrolling clerks. In all of the 13 appropriation bills, as I indicated yesterday, my staff estimated something like 10,000 little billettes that would accrue from the disaggregation of the 13 fiscal year 1995 appropriations bills. Now, that is quite an additional burden over and above what the enrolling clerks, I think, usually have to contend with.

Mr. MCCAIN. Will the Senator allow me to make a response to that, even if it is not totally adequate?

Mr. BYRD. Mr. President, yes.

Mr. MCCAIN. Mr. President, first of all, I went down to see the enrolling clerk here in the Senate, who is equipped with a computer system which basically cranks these things out about every 30 seconds. The computer can be programmed in such fashion.

I do agree with the Senator from West Virginia that this does increase the legislative load considerably. From my perspective—and I know it is not the perspective of the Senator from West Virginia—what I am exactly seeking is separate bills that can be examined separately so that there is no doubt as to what the Congress of the United States has passed.

Again, I know that the Senator from West Virginia does not agree with this viewpoint because we have had many hours of debate on this very issue. I believe that one of the problems is that we pass these massive bills which perhaps only the Senator from West Virginia is thoroughly familiar with and the rest of the body is not.

What happens is, we find—all too often, in my opinion—that we pass an appropriations bill, especially, and many times an authorization bill or even a reconciliation bill, and tucked away somewhere in there is—or a tax bill. I think the Senator from West Virginia would agree that some of the most egregious offenses as far as spe-

cial interests are concerned occur in the consideration and passage of tax bills around here. There are items that are tucked in there that we do not know about, and weeks, months or years may pass by before the American people and we as a body who have passed this legislation are aware of it.

I certainly understand what the Senator is saying about the large amount of paperwork, but at the same time, we are also trying to cure what many Americans believe is an unhealthy habit of putting things into bills—though they be authorization, or in the case of new entitlements, et cetera, or appropriations bills or tax bills—that are not for the good of all Americans but are for the good of special interests.

Now, whether that is actually true or not, the opinion of the Senator from West Virginia is obviously different from mine.

Mr. BYRD. Mr. President, I think there is undoubtedly a great deal of truth in what the Senator is saying. No question of that.

I personally favor the approach that is envisioned in the substitute that is being offered by Mr. DASCHLE, the distinguished minority leader. I intend to vote for something along that line.

I do not see in the original Domenici-Exon approach a shifting of power from the legislative branch to the executive branch. I do see in the Domenici-Exon approach which has been built upon by the distinguished majority leader in his substitute, I do see an opportunity for the President to register his opinion by rescinding certain items in appropriation and having a vote up or down on those items that he proposes to rescind.

It is a majority vote, that is true, and I am sure the distinguished Senator from Arizona prefers a two-thirds supermajority. But I favor that approach. I have no problem with giving the President another opportunity to select from appropriation bills certain items which he feels, for his reasons, whatever they may be, they may be political or for whatever reasons, I have no problem with his sending them to the two Houses and our giving him a vote.

I see in this, I say to the Senator, I see a shifting of the legislative power to the Executive. I think that power over the purse is so clearly vested in the legislative branch by the Constitution that we ought to be hesitant to enact legislation the effect of which will be to expand the President's powers. There is no question but the President's powers are somewhat expanded. To that extent, whatever the expansion of the President's powers are, the powers of the legislative branch are thereby decreased.

I also, as I said yesterday, am concerned about the breaking down of the balance between the two Houses under any of these measures which we are likely to pass.

I hope the measure that the distinguished minority leader introduces will be the one that will pass, but that remains to be seen. I kind of have my doubts. But under the other measures, it seems to me that the Senate, to a considerable extent, loses. It no longer remains an equal partner in the decision.

The Senator well knows that the Senate adds a lot of amendments to appropriation bills, and those amendments, when they are enrolled separately, they go to the President. The President vetoes them. They actually originated in this body. But if they are vetoed, they are going to be sent back to the other body, and the other body will have the option of trying to override or not trying to override. If the other body chooses not to attempt to override, then the Senate has no voice at all. So to that extent I think the Senate is subordinated to the other body.

Mr. MCCAIN. May I respond without interrupting?

Mr. BYRD. Yes; I will be glad to yield.

Mr. MCCAIN. I am sure the Senator from West Virginia will let me know when I am interrupting.

On the first point that the Senator from West Virginia makes about the majority versus two-thirds, I, first of all, have engaged in that debate with the Senator from West Virginia. But I also think that if we are going to call it, if it is going to be a veto by the President, that the Constitution is clear on what a veto is—a two-thirds majority. So I would even have a constitutional problem with the majority override.

My second response is that it only took a majority of both Houses to put the measure into one of these bills, so it seems to me it would not be very difficult to get a majority of both Houses to override that veto.

Now, I understand the argument that if a bill were given, under this scenario, the light of day and it was improper, then a majority of both bodies would probably not support such a thing, if it were wasteful or irrelevant. But I am not so sure of that. I think that it would be much more appropriate for a two-thirds override.

When the distinguished Senator from West Virginia talks about a shift in power, which was what he spoke about initially, I know that the Senator from West Virginia knows, because he was one of the few who was around here when the President of the United States had basically impoundment authority, when the President of the United States basically could say, "I don't care what the Congress of the United States appropriates. I'm not going to spend that money."

That, as the Senator well knows, goes back to Thomas Jefferson, in 1801, who impounded \$50,000 that was appropriated for gunboats.

So it is my view, as I have stated to the Senator from West Virginia many

times in the past, that when that impoundment act power disappeared, there was that shift, a significant shift from the executive to the legislative branch and consequently, in my opinion—and I know it is not shared by the Senator from West Virginia—the revenues and expenditures began to grow apart in a rather dramatic fashion.

Mr. BYRD. When was this?

Mr. MCCAIN. In 1974.

Mr. BYRD. They actually started the big increase in 1981 after the election of Mr. Reagan. That is when the precipitous increases began.

Mr. MCCAIN. I do have a chart I think that shows a very steady increase. And I can bring it out. I think it is a valid chart.

Mr. BYRD. I have seen it. I think it is an excellent chart. I think he very adroitly and expertly—

Mr. MCCAIN. Yes.

Mr. BYRD. Describes it.

Mr. MCCAIN. May I just finally respond to the aspect as far as which House might have some advantage.

Again, I think there is some validity to that argument. I think our Founding Fathers said that all revenue bills would begin with the other body. And although we are obviously allowed to amend those bills, the primary responsibility was placed in the other body, as responsibility for approval of treaties, confirmation of nominees, et cetera, was different. So the responsibility in the view of our Founding Fathers did lie in the other body, in my view.

And also, if there are amendments that are passed on this side and attached to the bill, they are accepted in conference, I believe that that acceptance in conference puts the stamp of approval on both bodies.

Now, in reality would a vote in the other body be as fervent or as committed to an amendment that originated in this body? Perhaps not. But I would also suggest that it would be a quick way of retaliation if they started doing that in the other body. Even though it originated there, it would still have to come here, and there might be less enthusiasm for overriding the President's veto when those that originated in that body got over here. So it is my view that it would probably balance out in the long run.

Mr. BYRD. I thank the Senator. I am not so sure progress is always the end result when retaliation is taken by one body against another. That works both ways. And the first thing we know the other body retaliates.

With respect to the approach that is being utilized by Mr. DASCHLE and which was envisioned in S. 14, I believe it was, that did not contemplate a veto. That contemplated the rescissions of items by the President, and it was not a matter of overriding rescissions by two-thirds vote. It was a matter of rejecting the proposed rescissions by a majority vote.

On an override of the veto, I agree, that should be a two-thirds vote.

Mr. BROWN. Will the Senator from West Virginia yield?

Mr. BYRD. One final point and then I am going to yield because Senator GLENN is waiting.

The other point I wish to make here is that under this proposal, under this substitute whereby each subsection, paragraph, item, allocation, suballocation, and all these things are enrolled separately, will it not be possible for the President to strike a section or a paragraph that imposes a condition on the expenditure of certain sums?

Suppose we appropriate certain amounts of money to the Department of Defense with a condition that it not send troops to Somalia, or that if troops are sent to Somalia the Senate and House decide that there should be a condition included that they be withdrawn no later than 60 days. Would it not be possible for the President simply to strike the condition and leave in the amounts, thereby deciding policy which would not have as its purpose the saving of moneys or the reduction of the deficit? Would we not be handing the President a policymaking tool which would be exceedingly difficult for us to correct if he chose to line item out that condition?

Mr. MCCAIN. I say to my colleague from West Virginia that that would not be possible. What the Senator is referring to is what we normally call fencing language, which is commonplace. The money would stay with the fencing language. He could not veto out the money and leave the language in, or vice versa. They would be attached to one another. And that will be clarified.

Mr. BYRD. I thank the Senator for his response. I feel I must disagree with him. I am sure the Congress could so provide the language that they would stay together, but Congress could also provide the language in such a way that would make it possible for the President to strike out the conditioning, the conditioning proviso, I believe. And that gives me cause for concern.

I have no desire to keep the floor any longer. I thank the Senator from Arizona. I thank the Senator who is the author of the amendment.

I thank all Senators and I yield the floor.

The PRESIDING OFFICER (Ms. SNOWE). The Chair recognizes the Senator from Ohio.

Mr. GLENN. Madam President, I ask unanimous consent to lay aside the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 405 TO AMENDMENT NO. 347

(Purpose: To provide for the evaluation and sunset of tax expenditures)

Mr. GLENN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] proposes an amendment numbered 405 to amendment No. 347.

Mr. GLENN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. . EVALUATION AND SUNSET OF TAX EXPENDITURES

(a) **LEGISLATION FOR SUNSETTING TAX EXPENDITURES.**—The President shall submit legislation for the periodic review, reauthorization, and sunset of tax expenditures with his fiscal year 1997 budget.

(b) **BUDGET CONTENTS AND SUBMISSION TO CONGRESS.**—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

“(30) beginning with fiscal year 1999, a Federal Government performance plan for measuring the overall effectiveness of tax expenditures, including a schedule for periodically assessing the effects of specific tax expenditures in achieving performance goals.”.

(c) **PILOT PROJECTS.**—Section 1118(c) of title 31, United States Code, is amended by—

(1) striking “and” after the semicolon in paragraph (2);

(2) redesignating paragraph (3) as paragraph (4); and

(3) adding after paragraph (2) the following:

“(3) describe the framework to be utilized by the director of the Office of Management and Budget, after consultation with the Secretary of the Treasury, the Comptroller General of the United States, and the Joint Committee on Taxation, for undertaking periodic analyses of the effects of tax expenditures in achieving performance goals and the relationship between tax expenditures and spending programs; and”.

(d) **CONGRESSIONAL BUDGET ACT.**—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end thereof the following:

“TAX EXPENDITURES

“SEC. 409. It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that contains a tax expenditure unless the bill, joint resolution, amendment, motion, or conference report provides that the tax expenditure will terminate not later than 10 years after the date of enactment of the tax expenditure.”.

Mr. GLENN. Madam President, I believe this amendment has been accepted, cleared on both sides. It has three major parts. It requires the President in next year's budget to submit legislation for an orderly sunset or reconsideration of existing tax expenditures; No. 2, it requires the administration to conduct performance reviews of tax expenditures just as they do now with regular discretionary spending; and three, it makes it out of order to consider a new tax expenditure if it does not consider a sunset or reconsideration, of course before that sunset time.

The amendment will increase scrutiny of tax expenditures and help make the line-item veto more effective.

I am happy that the Dole substitute to S. 4 provides the President with the authority to item veto some new tax breaks. There seems to be some dis-

agreement about the scope of authority under the current language. I believe that it should be interpreted quite broadly.

However, regardless of how broadly you read the language, it still does not include the \$453 billion in existing tax expenditures which still remain off budget limits. Now if you divide up the budget pie, tax expenditures are a huge slice.

Tax expenditures are growing at a rate six times faster than discretionary spending. And unlike discretionary spending, these tax expenditures generally do not receive regular scrutiny. Since the first corporate tax law of 1909, special provisions have been placed in the Code and generally forgotten. In fact, many would be surprised to learn that nearly half of the revenue losses from these expenditures stem from provisions placed in the Code before 1920.

I do not believe that all of these expenditures are unnecessary. In fact, I support many of them. But I believe that—after some of them have been in the Code for the better part of a century—it is time we set up a review process to determine whether budget savings and program improvements are achievable.

My amendment utilizes a concept that we have mandated for discretionary spending—performance review. It would require the President to determine just how well these programs are achieving their goals. Are we getting our money's worth? We have spent a lot of time talking about instituting cost-benefit analyses for Federal regulations. Would it not make sense to have a similar process for programs that cost \$453 billion this year.

This was first suggested in Governmental Affairs Committee report language that accompanied the Government Performance and Results Act of 1993, the distinguished chairman of the Governmental Affairs, the senior Senator from Delaware, was the father of that important law which for the first time established measurable objectives for agency programs. My amendment codifies report language of that bill to include expenditures.

While providing a better understanding of the effectiveness of current tax expenditures, it will also help the President to determine when it may be advisable to item veto new tax expenditures and even new spending. Under performance review, the President will be able to better identify where current tax expenditures overlap or duplicate newly proposed tax expenditures. And it will help him to identify whether new spending programs are unnecessary because existing tax expenditures are adequately achieving the same policy goals.

My amendment also requires the President to submit legislation to Congress which lays out an orderly schedule for the sunset and reauthorization of current tax expenditures. Just because something was placed in the code at the beginning of the century does

not mean that it should be exempt from any congressional review. We might be surprised with what we find if we are forced to sit down and reauthorize many of these programs.

The President would not have to propose the sunset off all tax expenditures. There may be some that he will suggest remain permanent. But it will provide us with a roadmap for more comprehensive congressional review of tax expenditures. The tax expenditures that the Congress determines should come under a reauthorization process, will also be subject to the President's veto pen in the future.

In addition, under my amendment, it would be out of order to consider new tax expenditures that did not include a sunset date at least within 10 years. I don't think we should go through another century before the taxes we enact today are reviewed.

I think this merely sets forth a good Government approach on tax expenditures. It is high time we shed some light on this area of the budget. I understand that my amendment has been cleared by both the minority and majority leaders and I hope my colleagues will join me in support of this amendment.

Madam President, I think it has been accepted on the other side. I ask my distinguished colleague, the Senator from Arizona, if he has any comments? I would be prepared to urge the amendment.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, we are prepared to accept the amendment on this side. I think it is a good amendment and one which I think will be very helpful.

Madam President, may I say for the information of all Senators, I have been asked by the majority leader to state there will be no further votes today. However, I hope Members who have amendments will remain this evening to offer them.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Madam President, I congratulate the Senator from Ohio for offering the amendment. The amendment provides for a process for periodically assessing the effects of tax loopholes and requires that all new loopholes have sunset provisions.

As I understand it, the language of his amendment has been negotiated, it has been agreed to on both sides. I urge its adoption at this time.

Mr. GLENN. Madam President, I urge the amendment.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 405) was agreed to.

Mr. GLENN. Madam President, I move to reconsider the vote.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. Madam President, I ask unanimous consent the record show that the pending Abraham amendment was set aside in order to consider the Glenn amendment, and I ask unanimous consent that the Abraham amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 406 TO AMENDMENT NO. 347

(Purpose: To clarify the definition of items of appropriations)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. MURKOWSKI and Mr. EXON, proposes an amendment numbered 406 to amendment No. 347.

The amendment is as follows:

At the end of section 5(4)(A), strike “; and” and add the following: “but shall not include a provision which does not appropriate funds, direct the President to expend funds for any specific project, or create an express or implied obligation to expend funds and—

“(i) rescinds or cancels existing budget authority;

“(ii) only limits, conditions, or otherwise restricts the President’s authority to spend otherwise appropriated funds; or

“(iii) conditions on an item of appropriation not involving a positive allocation of funds by explicitly prohibiting the use of any funds; and”.

Mr. LEVIN. Madam President, under the substitute before us, the line-item veto authority is not limited to appropriations. That may come as a surprise to many of us, but that is the way the substitute is now worded. The line-item authority in the substitute, which is effectively given to the President, is not limited to appropriations. That is because a line item in an appropriations bill would be separately enrolled and would be subject to a veto. That would include not only the appropriations themselves but also all limits on appropriations, conditions on appropriations, rescissions of appropriations. They would all be treated in the same way as appropriations themselves. The purpose of this bill is to try to reduce the add-ons of Congress that cannot in some minds be justified. The purpose of the bill is to reduce spending, not to increase spending. But if we treat limits on appropriations and rescissions of appropriations in the same way as we treat appropriations which are added by the Congress, we are effectively going to be increasing spending and not reducing spending.

The rescissions that the Congress adds and puts into an appropriations

bill, the limitations on appropriations that we put in appropriations bills, the conditions that we place on appropriations are all going to be treated as separate items from the appropriations themselves. This process in the substitute is going to splinter the condition on an appropriation into a separate bill. It will not be in the same bill as the appropriations. So the President would be able to veto the limit on the appropriation and leave the appropriation itself thereby saving no money, indeed quite the opposite frequently, and giving himself more authority in the process.

If the President can veto the limitations and the conditions placed on appropriations without vetoing the appropriations itself, we have had the exact opposite effect, I believe, of what was intended by this bill, and we have ceded great power to the President, without any gain, in terms of cutting spending. He can veto a rescission that we add to a bill and spend the money. He can veto a limitation on spending that we put in the bill and spend all the money.

Why should we give this special veto authority to the President when the provisions of the bill that he would be vetoing cut spending instead of adding to spending?

Let me give some examples. Suppose we put in a provision, as we have, which states that none of the funds appropriated shall be spent to keep American troops in a particular country after a specified date? The President can veto that provision and then continue to spend the appropriated funds for the purpose that Congress voted to prohibit. Suppose we put a provision into a bill, as we have, which says none of the funds in the foregoing paragraph shall be available to promote the sale of tobacco or tobacco products? The President could veto that restriction and limitation and spend the money as he pleases, for the prohibited purpose. We would not have saved any money, but the President would be given the power to spend money for a purpose that we explicitly prohibited—no savings to the Treasury and loss of congressional authority at the same time. Suppose we put a provision into a bill, as we have, stating that none of the funds appropriated shall be spent to provide an incentive for the purpose of inducing a company to relocate outside the United States? The President could veto the provision and continue to spend money on the program that Congress intended to prohibit.

Say we put a provision into a bill, as we have, which says that of the large appropriation, no more than x-million dollars can be spent on consultants? We put a lot of provisions in like that. The Senator from Arkansas, Senator PRYOR, has been a leader to limit appropriated funds spent on consultants. The way the bill is currently written, without this amendment, the President could veto that limit on spending for consultants and then use the larger

amount for any purpose he wanted, including all the money, if he wanted, for consultants. We will not have saved any money. We will have lost the power to restrict the spending of money, with no gain to the Treasury.

We have put restrictions on entertainment. We have put restrictions on travel, first-class travel. And if, again, those restrictions are put in separate bills, as they are under the current version of this substitute, and the President can veto those restrictions, the Treasury gains nothing, the taxpayers are out money that we did not want them to be out, for instance, for first-class travel, and we will have lost the power of the purse, for no gain to the Treasury.

As I said, Madam President, almost more remarkable than the power that would be yielded to the President under the version before us, without this amendment, is the fact that there would be no purpose served in terms of saving money. And in the many cases I have given, and in many other cases, as a matter of fact, we would be losing and spending money that otherwise would not be spent.

Last night on the floor, I gave a few examples from a real appropriations bill—State, Commerce, and Justice. I want to give one of those examples again to show how this would work since I did bring this up on the floor last night.

We had a provision in last year’s appropriation bill for State, Commerce, Justice, that no more than \$11 million would be spent on furniture and furnishings related to new space alteration and construction projects. That is a limitation on spending. That says the President cannot spend more than that. That is part of a larger appropriations bill, a \$2.3 billion appropriations bill. But it says that out of that \$2.3 billion, the maximum that can be spent for that new furniture is \$11 million. I had a chart up here on the floor last night. If the President could veto the “not to exceed \$11 million,” which would be in a separate enrolled bill, he would have then vetoed the restriction on the spending, leaving himself the \$2.3 billion appropriation of which he could spend all he wanted on furniture, without any limit. We would not have saved the money. It would have been spent on something we did not want it to be spent on. The Treasury does not gain a dime, but instead, something that we did not want because we did not think it was a high enough priority, would happen.

The Defense supplemental appropriations bill that we passed just last week contained 20 separate paragraphs of Defense rescissions and 18 paragraphs of rescissions of nondefense funds, for a total of roughly \$3 billion in spending cuts. This was in an appropriations bill, but these are spending cuts, rescissions. For instance, the bill contained provisions that would cut spending for

FAA facilities by \$35 million. It cut spending for highway projects by \$140 million. But under the substitute before us, unless this amendment is adopted, each of these provisions would be enrolled as a separate bill and sent to the President for signature. Each could be vetoed by the President, and if he exercised that authority given to him by the substitute, the result would be more Government spending rather than less.

Madam President, the amendment which I have sent to the desk on behalf of myself, and Senators MURKOWSKI and EXON, addresses this issue the best that we can in this bill. In my opinion, it can be addressed far better in an expedited or enhanced rescission bill. But that is not the issue before us. The issue before us is this substitute which, in all likelihood, is going to pass. We should avoid having in this substitute language which I believe has the unintended consequence of eliminating all of the restrictions and the limits on spending, and the rescissions of spending that we put in appropriations bills.

So while I do not think that all of the problems I see in the substitute are cured, at least this would prevent the President from using this separate enrollment power to increase spending, or to avoid congressional restrictions and limitations on spending. And it is my hope that this amendment will be adopted because, again, I think it does address some of the unintended consequences of this substitute.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 407 TO AMENDMENT NO. 347

(Purpose: To exempt items of appropriation provided for the judicial branch from enrollment in separate bills for presentment to the President)

Mr. HATCH. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] for himself, Mr. ROTH, Mr. HEFLIN, and Mr. ABRAHAM, proposes an amendment numbered 407 to amendment No. 347.

Mr. HATCH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 21, after "separately" insert "except for items of appropriation provided for the judicial branch, which shall be enrolled together in a single measure. For purposes of this paragraph, the term 'items of appropriation provided for the judicial branch' means only those functions and expenditures that are currently included in the appropriations accounts of the judiciary, as those accounts are listed and described in

the Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1995 (Public Law 104-317).

Mr. HATCH. Madam President, as I understand it, I now have that amendment pending, and it can be set-aside and we will vote on it tomorrow sometime?

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. I yield the floor.

AMENDMENT NO. 406 TO AMENDMENT NO. 347

Mr. MCCAIN. Madam President, I want to congratulate the Senator from Michigan, Senator LEVIN, and the Senator from Alaska, Senator MURKOWSKI, on working out this, I think, very important agreement. It is well thought out. The amendment reaffirms that any and all provisos or fencing language, including all limitations on spending, such as caps, be tied to dollar amounts and not be enrolled freestanding.

The bill, as currently drafted, would not cause policy provisos to be separately enrolled. However, if the Congress were to place caps on spending within an allocation, such language might be separately enrolled. This amendment clarifies that it would not. It is a good amendment and we are prepared to accept it on this side.

I understand from my friend from Michigan that there may be concern by a Member or Members on his side of the aisle. So we will not seek its adoption until such time as it is either resolved or those who are in disagreement call for further debate and ensuing vote.

But again, I want to say to the Senator from Michigan—this is probably not the appropriate time—whenever there is an issue, the Senator from Michigan goes into it in depth. He understands the legislation. He finds areas that need to be improved, and he is willing to reach accommodation with those who have similar but sometimes slightly differing views, as has just happened between Senator LEVIN and Senator MURKOWSKI.

That is one of the reasons why it is a pleasure to work with him in this body, as I have for many years on the Armed Services Committee and on the Governmental Affairs Committee.

I believe there may be additional amendments by the distinguished Democratic leader coming up, so I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, let me thank the Senator for his comments, which are very reciprocal on my part in terms of working with him over the years on the Armed Services Committee. We have had a very good relationship. I thank him for the support of the amendment.

There is, indeed, as I mentioned, perhaps a Member on this side who may oppose the amendment. We are not sure. We want to clarify that. It would be better, therefore, that any vote on

this be delayed until we can ascertain whether there is objection on this side or not.

Mr. MURKOWSKI. Madam President, I am pleased to join Senator LEVIN in offering this amendment that would clarify the extent and scope of the President's ability to veto items in appropriations bills. This amendments ensures that when Congress imposes a condition that prevents spending in a particular area, or imposes conditions on such spending, such a restriction will not be considered an item that can be separately vetoed.

All of us recognize that approval of the Dole substitute line-item veto amendment or any other line-item veto proposal including S. 4, represents an historic shift of authority from Congress to the President. We are providing the President with very broad authority to pick and choose which individual items in appropriations bills he deems an improper use of taxpayer funds. He will have the authority to veto those items of spending that he disapproves of.

The substitute also gives the President authority to item veto authority in spending authorization bills and in tax bills. However, the only tax items that the President can item veto are a narrow range of provisions that affect only a limited group of taxpayers. More importantly, the tax-item veto can only be used if the provision loses revenue. A tax increase that targets a narrow class of taxpayers cannot be item vetoed.

I believe the tax item veto represents an appropriate restrictions on the President's ability to item veto because it is restricted to measures that lose revenue. The reason that I support the whole concept of the item-veto is that Congress has demonstrated an inability to control spending both through the Tax Code and the appropriations process. Today we are more than \$4.8 trillion in debt. Unless we take drastic action, our national debt will double in the next 10 years.

Part of the reason our debt is nearly \$5 trillion is because appropriators in both the House and Senate have devised ingenious ways to bury wasteful pork barrel spending in legislation designed to maintain the operations of Government. Weeks and months after the President has signed an appropriations bill we learn that buried in the bill are tens of millions of dollars of wasteful spending programs. My colleague from Arizona has already identified many of these wasteful spending programs. And under the current Presidential veto power, the President must approve these wasteful programs if he is to keep the Government running.

So the predicate, Madam President, for the line-item veto is to give the President the authority to veto spending programs that waste the taxpayers' money.

However, just as the President only should be able to veto tax provisions

that lose revenue, I believe the President should not be permitted to item-veto congressional prohibitions on appropriations spending. As all Senators know, Congress routinely includes prohibitions on particular spending as a check on unrestricted and arbitrary spending by the President. Most often, such prohibitions represent a conscious policy choice by Congress explicitly restricting the President's discretion.

For example, last year's foreign operations appropriations bill contains more than a dozen such restrictions. These restrictions prevent the President from providing money to an international organization that supports programs for "coercive abortion or involuntary sterilization." Another provision prevents funds from being used for assistance to a country that is not in compliance with the U.N. Security Council sanctions against Iraq.

These are just two of hundreds of examples of the legitimate power of the Congress to prevent the President from spending money on programs and policies that the Congress disapproves of. These restrictions do not increase the deficit. They do not represent pork barrel politics. They are legitimate congressional checks on the President that are consistent with the intent of the Founding Fathers when they created our constitutional system of separated powers and checks and balances.

Madam President, our amendment is intended to make clear that when Congress imposes a condition that prevents spending in a particular area, or conditions spending, that restriction will not be considered an item that can be separately vetoed. It ensures that a condition restricting or prohibiting the use of funds must be enrolled with the item of appropriation to which the condition applies.

Madam President, this amendment preserves congressional power to restrict the President from acting contrary to the wishes of the majority of Congress on important policy issues. I believe it is fundamentally necessary that we retain this authority and I hope my colleagues will vote for this amendment.

Mr. EXON. Madam President, I rise in support of the amendment offered by the senior Senator from Michigan. This amendment only makes good sense.

It would keep rescissions and cancellations of spending from being transmitted to the Presidents as separate items. Thus it would make it more difficult for the President to veto items that help to reduce the deficit.

As well, the amendment would ensure that limitations on spending stay together with the spending provisions that they limit. To do otherwise would allow the kind of nonsensical divisions of items that the Senator from Michigan so eloquently described yesterday evening.

I support the amendment and urge my colleagues to join in voting for it when it does come to a vote.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Madam President, on behalf of the Senator from Utah, I ask unanimous consent that he be added as an original cosponsor of the Abraham amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Madam President, I also ask unanimous consent that the pending Levin amendment be set aside.

The PRESIDING OFFICER. Without objection, the Hatch amendment will be set aside.

Mr. McCAIN. The Levin amendment.

The PRESIDING OFFICER. Without objection, both amendments will be set aside.

Mr. McCAIN. Madam President, the Hatch amendment, for purposes of complying with the unanimous-consent agreement, was presented and the debate and vote will be held on it probably tomorrow.

Mr. LEVIN. If the Senator will yield, our friend from Alaska has additional materials which I would like to ask unanimous consent be printed in the RECORD, if available, tonight. If not, we will make that same unanimous-consent request tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Madam President, if that is available tonight, it would be inserted in the RECORD immediately following the remarks of the Senator from Michigan.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Madam President, I wish to make some brief remarks with regard to support of the amendment offered by the Senator from Michigan, but at this time I yield the floor because I believe Senator BYRD would like to make some remarks not on the matter at hand.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Chair and I thank the distinguished Senator from Nebraska, Mr. EXON.

SPRING RETURNS TO THE WEST VIRGINIA MOUNTAINS

Mr. BYRD. Mr. President, 2 days ago, the first day of spring officially came to Washington. Here in Washington, the change from one season to another is often dramatic. One morning, D.C. temperatures might be in the freezing range, while the following day might find young men and women out on the Mall playing volleyball in shorts and tee shirts. Here, tulips and magnolias burst forth from nowhere, and the cherry blossoms transform the city as if by overnight magic.

But a few miles west of us—among the peaks and plateaus of the high Appalachians in West Virginia, spring

dawns like a beautiful young woman awakening from a long sleep.

If the geologists are correct, spring has awakened in the same fashion in West Virginia for millions of years.

High on Alpine West Virginia ridges—once, we are told, the equivalent in altitude of some caps among the Himalayas today—crystal ice and deep-packed snow begin their melt, the runoff seeking the sea first as droplets, then as rivulets, next as springs and brooks, then as creeks and streams, and finally as flooding branches that find their routes either into the widening Potomac on the eastern slopes of the Alleghenies and the western sides of the Blue Ridge, or into the mighty Ohio and Mississippi farther west—dependable flows of water of that helped to create the shores of Tidewater Virginia and Maryland's Eastern Shore through the millennia, on one hand, and that has built up the Mississippi Delta since before the bison crossed into North America, on the other hand.

But more subtle changes accompany spring's approach in West Virginia—changes too often observed only by the sparkling eyes of squirrels and of the first adventurous rabbits out of their winter burrows—changes such as tiny blossoms in greenening meadows, minuscule leaves emerging on bare maple branches, cardinals, and robins announcing in concert the impending arrival of a new season, and graceful deer grazing on tender blades of new grass—and all proclaiming the marvels of the Creator's bounty and brilliance.

Oh, to be a child once again in West Virginia—a child who, on his or her way to school in the cool of the morning air, can perhaps feast his or her senses on the dawning spring as most adults can no longer—a child who catches the first perfume of cherry blossoms on young fruit trees or who pauses to listen to the symphony of the songbirds or who savors the gentle breezes on his or her cheek, where but days before the cruel winter wind bit and chapped.

And soon, Mr. President, the mountains and hills of West Virginia will again be enfolded in new foliage from base to summit, and the sunrises and sunsets will put even the ceiling of the Sistine Chapel to shame with their incandescent colors and shafts of spun gold streaking across the early morning and evening vault of the West Virginia firmament.

There we may see,

The marigold that goes to bed wi' the Sun,
And with him rises weeping . . . daffodils,
That come before the swallow dares, and take
The winds of March with beauty; violets dim,
But sweeter than the lids of Juno's eyes
Or Cytherea's breath; pale primroses,
That die unmarried, ere they can behold
Bright Phoebus in his strength. . . .

Mr. President, I invite all of our colleagues to visit West Virginia at any time, but particularly during this special season of rebirth among the mountains, down the valleys, and across the